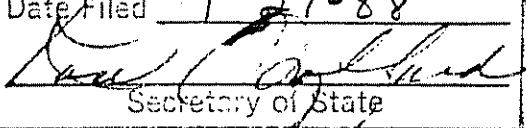


#5

INTERGOVERNMENTAL AGREEMENT BETWEEN THE
STATE OF ARIZONA
AND
CITY OF PHOENIX

47469

PROJECT NO.M-700-7(5)

NO	12691
FILED WITH SECRETARY OF STATE	
Date Filed	1-27-88
 Secretary of State	

FUND CODE: 853F2

THIS AGREEMENT, entered into this 27th day of January, 1988, pursuant to Arizona Revised Statutes, Section 11-951 through 11-954, as amended, by and between the STATE OF ARIZONA, acting by and through the ARIZONA DEPARTMENT OF TRANSPORTATION, hereinafter called "STATE" and CITY OF PHOENIX, a body politic and corporate, hereinafter called "LOCAL AGENCY".

WHEREAS, STATE is empowered by Arizona Revised Statutes, Section 28-108 to enter into this Agreement, and

WHEREAS, LOCAL AGENCY is empowered by Arizona Revised Statutes, Section 11-951 through 11-954 to enter into this Agreement, and

WHEREAS, Congress has authorized appropriation for, but not limited to, the construction of streets; primary, feeder and farm to market roads; the replacement of bridges; the elimination of roadside obstacles; the application of pavement markings, and

WHEREAS, such project within the boundary of LOCAL AGENCY has been selected by LOCAL AGENCY and the field survey of the project has been completed and the plans, estimates and specifications prepared and, as required, submitted to the Federal Highway Administration for its approval, and

WHEREAS, LOCAL AGENCY, in order to obtain Federal funds for the construction of the project hereinafter mentioned, is willing to provide the STATE with LOCAL AGENCY funds to match Federal funds in the ratio required or as finally fixed and determined by the Federal Highway Administration, and

WHEREAS, the primary interest of the STATE in the project is in the acquisition of Federal funds for the use and benefit of LOCAL AGENCY by reason of Federal Law and Regulations under which funds for the project are authorized to be expended, and

WHEREAS, it has been determined that it is in the public interest for the project embraced in this Agreement to be constructed under the supervision of LOCAL AGENCY, and

WHEREAS, the work embraced in this Agreement and the estimated cost is as follows:

GRADE, DRAIN and PAVE	
Estimated Cost:	\$2,898,378*
Federal Funds @ 92.48%	1,803,540
City of Phoenix Funds	1,152,253**

- * Includes 3% for ADOT construction overview.
- ** This includes \$948,183 in Non-Federal Aid construction and a 2% surcharge on the total per Chief Deputy State Engineer memo of 02/02/82.

AGREEMENT:

ARTICLE I

IN CONSIDERATION of the covenants of LOCAL AGENCY hereinafter contained and the faithful performance thereof, STATE agrees:

1. To submit a program containing the aforementioned project to the Federal Highway Administration with the recommendation that it be approved for construction, and that if such project is approved for construction by the Federal Highway Administration and the funds are available for the construction of said project, STATE, with the aid and consent of the Federal Highway Administration will proceed to advertise for, receive and open bids, and subject to the concurrence of the Federal Highway Administration and LOCAL AGENCY, award the contract, enter into a contract with the firm to whom the award is made for the construction of the project, such project to be performed, completed, accepted and paid for in accordance with the requirements of the Standard Specifications for Road and Bridge Construction of the Highways Division, Arizona Department of Transportation, will enter into a Project Agreement with the Federal Government covering the work embraced in the said contract or in the said Agreement and will request the maximum Federal funds available;

2. To furnish LOCAL AGENCY with copies of the proposed Project Agreement to be entered into by the STATE and the Federal Government and any Railroad Company Agreement necessary for the full completion of this project;

3. To inspect the project and audit the books and records of LOCAL AGENCY, as STATE deems necessary so that STATE may certify the satisfactory completion of project and the proper expenditure of funds to the Federal Highway Administration, as required by Federal statutes, rules and regulations;

4. Upon the satisfactory expenditure of project monies and completion of the project in accordance with the Standard Specifications for Road and Bridge Construction of the Highways Division, Arizona Department of Transportation, and the applicable State and Federal statutes, rules and regulations, STATE will certify the project to the Federal Highway Administration. It shall be the sole decision of STATE as to whether it may certify the project under the relevant laws, rules, regulations and specifications. The LOCAL AGENCY may concur in the certification if it desires, but its failure to do so shall not prohibit the STATE from certifying.

ARTICLE II

IN CONSIDERATION of the covenants of STATE hereinbefore contained and the faithful performance thereof, LOCAL AGENCY agrees:

1. To acquire, without cost to the STATE, the necessary right-of-way and material sites, and hereby certifies that all rights-of-way have been obtained and all necessary material sites have been acquired, subject to approval and funding of the project;

2. To remove from the proposed right-of-way, in a timely fashion so as to not slow construction progress, all obstructions or unauthorized encroachments of whatever nature, either above or below the surface of the roadway;

3. Not to permit or allow any encroachments, except those authorized by permit, upon, or private use of, the right-of-way, and in the event of any unauthorized encroachment or improper use, shall take all necessary steps to remove or prevent any such encroachment or use; failing in which STATE shall have the right to proceed with the removal or prevention to be borne by LOCAL AGENCY;

4. Upon completion of construction, to provide for at its own cost and as an annual item in its budget, proper maintenance; such maintenance to include, but not be limited to, traffic signals, signs, islands, curbs and markings necessary for the purpose of regulating, warning, and guiding traffic;

5. To mark and sign school crossings and railway-highway grade crossings in accordance with the requirements of the current edition of the Manual on Uniform Traffic Control Devices for Streets and Highways;

6. By such regulation as it may by ordinance provide, to regulate parking and not permit vehicles to be left on the street in any manner other than at the curb and parallel thereto and to restrict parking so as to prevent conflicts with moving traffic at intersections and at such other locations as necessary;

7. To deposit with STATE, prior to the solicitation of bids, funds in the amount determined by STATE to be necessary to match Federal funds in the ratio required;

8. To provide personnel to supervise the construction, such personnel to be acceptable to the STATE. The Federal Highway Administration will participate in the cost of construction supervision provided by LOCAL AGENCY at the pro rata established in the Project Agreement for up to 15 percent of the cost of construction. Construction supervision costs not participated in by FHWA shall be borne by LOCAL AGENCY;

9. To have all change orders approved by the STATE;

10. To complete the project in accordance with approved plans and specifications and the requirements of the relevant State and Federal statutes, rules, or regulations. In the event LOCAL AGENCY fails to comply with the plans and specifications or any relevant State or Federal statutes, rules, or regulations, it shall hold the STATE harmless from any claims or costs incurred by the STATE as a result of LOCAL AGENCY's failure to comply;

11. To let STATE employees perform any inspections of the project the STATE employees deem necessary, or to let STATE employees audit any books or records of LOCAL AGENCY the STATE employees deem necessary, in order for the STATE to satisfy itself that the monies on the project have been spent and the project completed in accordance with the plans and specifications, statutes, rules, and regulations, of the STATE and Federal governments.

ARTICLE III

IN CONSIDERATION of the premises, it is mutually agreed:

1. That the Project Agreement to be entered into between the Federal Government and STATE be incorporated in and made a part of this Agreement by reference and shall have the same force and effect as though fully written herein; and

2. That STATE assumes no financial obligation or liability hereunder, and that LOCAL AGENCY will reimburse STATE for all costs STATE expends in fulfilling its obligations under this Agreement, as said costs are defined in this Agreement. The LOCAL AGENCY may examine STATE's costs. It is understood and agreed that STATE's participation herein is limited primarily to requesting Federal Aid; and if said Aid is obtained, in doing the inspections necessary to permit the STATE to certify the project; and, if the project is completed in accordance with applicable State and Federal laws, rules, regulations, and specifications, to so certify to the Federal Government;

3. If, at any time, the Federal Government claims money is due it from the STATE arising out of this Agreement or project, the LOCAL AGENCY agrees to (1) negotiate this issue with the Federal Government, (2) hold the STATE harmless from all costs it may incur resulting from this issue, and (3) hold the STATE harmless from all monies, which may eventually be paid by the STATE to the Federal Government either directly, by off-set, deductions or credits;

4. That this Agreement is subject to cancellation by the Governor pursuant to Arizona Revised Statutes 38-511; the provisions of which are incorporated herein by reference;

5. That LOCAL AGENCY assumes full responsibility for the design, plans, specifications, engineering, construction, and maintenance of the project;

6. That the cost of the work covered by this Agreement is to be borne by the Federal Government and LOCAL AGENCY, each in the proportion fixed and determined by the Federal Highway Administration;

7. That the term "cost", when used in this Agreement, shall mean all monies paid or spent by the STATE and shall include, but not be exclusive of, all in-house expenses which STATE incurs in fulfilling its obligations under this Agreement, such as appropriate allocation of salaries, materials, equipment, and general overhead which the STATE uses or expends in inspections, audits, approval of change orders, certification, or the submission of information to the Federal Highway Administration. "Cost" shall also include, in the event of a lawsuit being filed, the attorneys' fees and expenses of litigation incurred by the STATE, whether in-house or otherwise and any judgement rendered against the STATE. The LOCAL AGENCY shall have the right to select an attorney to represent the STATE so long as that choice is also satisfactory to STATE. "Cost" shall also include any monies claimed by the Federal Government from the STATE resulting from the STATE's participation in this project;

8. That arbitration will be used pursuant to A.R.S. 12-1518 if the entire relief in controversy is money in an amount less than One Hundred Thousand Dollars (\$100,000);

9. That if the STATE is to disburse any Federal funds under this Agreement, the STATE shall be obligated to disburse those funds only after the Federal Highway Administration has approved such disbursement;

10. That any damages or costs arising from the carrying out, in any respect, of this Agreement or any modification thereof, shall be solely the liability of LOCAL AGENCY, LOCAL AGENCY hereby agrees to save, hold harmless and defend and indemnify from loss STATE, any of its departments, agencies, officers or employees from any and all costs and/or damages to any person or property whatsoever, except for the active negligence of STATE personnel who may be associated with the project while actually engaged in the performance of their duties, which are caused by any activity, condition, or event arising out of the performance or nonperformance of any provision of this Agreement by STATE or LOCAL AGENCY, or any of LOCAL AGENCY's independent contractors, or any of said contractors' agents, officers or employees;

11. That this Agreement, except the provisions for maintenance and indemnification which shall be perpetual, shall terminate upon completion of the project in accordance with the terms of this Agreement, or may be terminated at any time prior to the awarding of construction is commenced, by either party upon thirty (30) days written notice of that intent;

12. That this Agreement shall be filed with the Office of the Secretary of State and shall become effective on the date above written or when filed with the Secretary of State, whichever is later;

13. Attached hereto is an authenticated copy of the resolution of the STATE and an authenticated copy of the resolution of the governing body to LOCAL AGENCY authorizing the appropriate entity to enter into this Agreement; also attached is a copy of the written determination of the legal counsel of LOCAL AGENCY that this Agreement is in proper form and within the powers and authority granted to LOCAL AGENCY under the laws of this STATE.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first written above.

STATE OF ARIZONA _____

By: STATE ENGINEER

By: *A. L. Fuld*
Chief Deputy State Engineer

ATTEST:

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

On this the 5th day of November, 1987, before me, *Consuelo C. Cazares*, the undersigned Notary Public, personally appeared *A. L. Fuld*, Chief Deputy State Engineer, Arizona Department of Transportation, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.

IN WITNESS WHEREOF I hereunto set my hand and official seal.

Consuelo C. Cazares
NOTARY PUBLIC

My Commission Expires:

My Commission Expires 11-1-88

City of Phoenix

By: Marvin A. Andrews-City Manager
Governing Body

By: *C. Philip Arthur*
Deputy City Engineer
Title:

ATTEST:

Consuelo C. Cazares
CITY CLERK

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

On this the 10th day of November, 1987, before me, Consuelo C. Cazares, the undersigned Notary Public, personally appeared C. Philip Arthur of the City of Phx. Engineering Dept. known to me (or satisfactorily proven) to be the person described in the foregoing instrument, and acknowledged that he executed the same in the capacity therein stated and for purposes therein contained.

IN WITNESS WHEREOF I hereunto set my hand and official seal.

Consuelo C. Cazares
NOTARY PUBLIC

My Commission Expires:

November 26, 1988



Attorney General

1275 WEST WASHINGTON

Phoenix, Arizona 85007

Robert K. Corbin

INTERGOVERNMENTAL AGREEMENT

DETERMINATION

A. G. Contract No. KR88-0006, is an agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining parties, other than the State or its agencies, to enter into said agreement.

DATED this 5 day of January, 1988.

ROBERT K. CORBIN
Attorney General

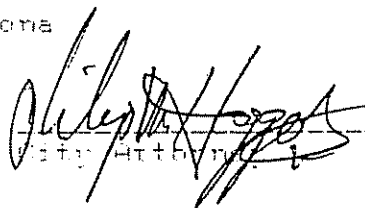
Jan Acosta
Assistant Attorney General
Transportation Division

PROJECT NO. M-700-7151
INDEX NO. E-823963

FUND CODE 853F2

APPROVED AS TO FORM and within the powers and
authorities granted to the City of Phoenix under the
laws of the State of Arizona

ACTING


City Attorney 11-9-87

GREEN — CITY CLERK
 WHITE — CITY ATTORNEY
 BLUE — CITY MANAGER
 PINK — ACCOUNTS NOTIFICATION
 CANARY — DEPARTMENT NOTIFICATION
 BUFF — DEPARTMENT FILE COPY

CITY OF PHOENIX, ARIZONA

REQUEST FOR COUNCIL ACTION

ALL RCA'S MUST BE IN THE CITY MANAGER'S OFFICE BY NOON ON THE TUESDAY, SEVEN DAYS BEFORE THE FORMAL CITY COUNCIL MEETING WITH ALL REQUIRED SIGNATURES. COMPLETE THIS FORM PER M.P. 1906

To the City Manager:

DATE October 5, 19 87

THE FOLLOWING COUNCIL ACTION IS HEREBY REQUESTED: ☐ ORDINANCE ☐ RESOLUTION ☒ FORMAL ACTION

MAJOR STREET PROJECT

INTERGOVERNMENTAL AGREEMENT WITH THE STATE OF ARIZONA
43RD AVENUE, CACTUS ROAD TO THUNDERBIRD ROAD
P-322963 & ST-356526 H-700-7(5), DISTRICT 2

Request the City Manager to enter into an Intergovernmental Agreement (IGA) with the State of Arizona through its Department of Transportation for the paving and storm drain improvements on 43rd Avenue, Cactus Road to Thunderbird Road. This is a Federal-aid Project. Federal funds are available for the paving improvements only. The City will bear the cost for the storm drain installation.

The City will be responsible for the construction administration with ADOT in a construction overview role. Upon completion, the City will sign, stripe and maintain the street.

The estimated total cost of the project is \$2,398,378. The breakdown is as follows:

Federal Funds @ 92.45%	\$1,803,540
City of Phoenix Funds:	\$1,152,253
Paving \$231,687	
Storm Drain \$920,566	

*includes a 2% surcharge imposed by ADOT


Funds are available through the 1984 Major Street & Storm Sewer Bonds

Bid Bond (Surety) Required? <input type="checkbox"/> Yes <input type="checkbox"/> No		3 Bond submitted by low bidder? <input type="checkbox"/> YES <input type="checkbox"/> NO		4 Performance Bond (Surety) Required? <input type="checkbox"/> Yes <input type="checkbox"/> No	
SOURCE OF FUNDS 1984 Bonds 152 2 165 \$ 920,556 ST 231,687 P \$ 1,152,253				12 Recommended by: Department/Function <u>Transportation Design</u> Division Head Signature <u>/s/ C. PHILIP ARTHUR</u> Department Head Signature <u>Deputy City Engineer</u>	
5 Emergency Clause? <input type="checkbox"/> YES <input type="checkbox"/> NO IF LESS THAN FIVE COUNCIL MEMBERS ARE PRESENT: <input type="checkbox"/> CONTINUE ONE WEEK <input type="checkbox"/> ADOPT WITHOUT EMERGENCY CLAUSE		7 Requested by: <u>Engineering</u> Phone # <u>4955</u> 8 WPD Document # <u>11-4</u> 9 Desired Agenda Date: <u>Oct 21, 1987</u>		13 Approved as to availability of funds: <u>[Signature]</u> MANAGEMENT & BUDGET DIRECTOR	
0 Formal contract required? <input type="checkbox"/> Yes <input type="checkbox"/> No Previous contract # _____		14 Approved: <u>[Signature]</u> CITY MANAGER		Transportation Services Manager	
5 Council action taken: Formal action: RESOLUTION NO _____ ORDINANCE NO _____ DATE <u>10-5-87</u> 19 <u>87</u> <u>4-1-77</u>					

R E S O L U T I O N

Be it resolved on this, the 16th day of December, 1987, that I, CHARLES L. MILLER, as Director, Arizona Department of Transportation, have determined that pursuant to A. R. S. 28-108, it is in the best interests of the State of Arizona that the Department of Transportation, acting by and through its Highways Division, enter into an Intergovernmental Agreement with City of Phoenix for Project No. M-700-7(5).

The project consists of grading, drainage and asphaltic concrete pavement.



CHARLES L. MILLER, Director
Arizona Department of Transportation